

Pension Benefit Guaranty Corporation

§ 4010.5

date for the plan year beginning in 2007 using the valuation interest rate for that plan year) of the amount so reduced is not treated as part of the funding standard account credit balance when that balance is subtracted from the asset value under paragraph (b)(4)(iii) of this section.

(c) *Exempt entities.* A person is an exempt entity for an information year if the conditions of paragraphs (c)(1) through (4) of this section are satisfied.

(1) The person is not a contributing sponsor of a plan (other than an exempt plan) as of the last day of the information year.

(2) The person has revenue for its fiscal year ending within the controlled group's information year that is five percent or less of the revenue of the person's controlled group for the fiscal year(s) ending within the information year.

(3) The person has annual operating income for the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) Five percent of the controlled group's annual operating income for the fiscal year(s) ending within the information year, or

(ii) \$5 million.

(4) The person has net assets at the end of the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) Five percent of the controlled group's net assets at the end of the fiscal year(s) ending within the information year, or

(ii) \$5 million.

(d) *Transition rule; failure to make required contribution; minimum funding waiver.* For plan years beginning before 2008, where the reference is made in paragraph (a)(2) of this section to “ERISA section 303(k) and Code section 430(k)” a reference to “ERISA section 302(f)(1)(A) and (B) and Code section 412(n)(1)(A) and (B)” shall apply in its place, and where the reference is made in paragraph (a)(3) of this section to “ERISA section 302(c) and Code section 412(c)” a reference to “ERISA section 303 and Code section 412(d)” shall apply in its place as those provisions are in effect for plan years beginning before 2008.

(e) *Minimum funding waiver—(1) General.* For purposes of § 4010.4(a)(3), a portion of the minimum funding waiver for a plan is considered outstanding unless prior to the plan year ending within the information year the statutory amortization period has ended, or, as of the valuation date for the plan year ending within the information year, the amortization bases are deemed to be reduced to zero pursuant to ERISA section 303(e)(5) and Code section 430(e)(5).

(2) *Example.* Company A sponsors Plan X, which received a minimum funding waiver of \$700,000 for the plan year ending December 31, 2004, and another waiver of \$500,000 for the plan year ending December 31, 2008. Assume that the amortization bases of the waivers are not reduced to zero pursuant to ERISA section 303(e)(5) and Code section 430(e)(5), and the waivers are therefore outstanding for the full five-year statutory amortization period. Also, assume Company A has a calendar information year. For the 2009 information year, Company A must report under ERISA section 4010. However, for the 2010 information year, Company A, assuming no other obligation to report under ERISA section 4010, is not required to report.

(f) *Certain plans to which special funding rules apply.* The provisions of sections 104, 105, 106, and 402(b) of the Pension Protection Act of 2006, Public Law 109-280 (dealing with plans of certain rural cooperatives, certain plans affected by settlement agreements with PBGC, certain plans of government contractors, and certain frozen plans of commercial passenger airlines and airline caterers), are disregarded for purposes of this part, except that these provisions are taken into account in determining the information to be submitted under § 4010.8(i) of this part (in connection with the actuarial valuation report).

[74 FR 11030, Mar. 16, 2009]

§ 4010.5 Information year.

(a) *Determinations based on information year.* An information year is used under this part to determine which persons are filers (§ 4010.4), what information a filer must submit (§§ 4010.6–4010.9), whether a plan is an exempt

plan (§ 4010.8(c)), and the due date for submitting the information (§ 4010.10(a)).

(b) *General.* Except as provided in paragraph (c) of this section, a person's information year is the fiscal year of the person. A filer is not required to change its fiscal year or the plan year of a plan, to report financial information for any accounting period other than an existing fiscal year, or to report actuarial information for any plan year other than an existing plan year.

(c) *Controlled group members with different fiscal years.* If members of a controlled group (disregarding any exempt entity) report financial information on the basis of different fiscal years, the information year is the calendar year. (If any two members of the controlled group report financial information on the basis of different fiscal years, the determination of whether an entity is an exempt entity is based on a calendar year information year for purposes of this paragraph (c) and § 4010.4(c).)

(d) *Examples.* The following examples illustrate the rule in paragraph (c) of this section.

(1) *Example 1.* Companies A and B are the only members of the same controlled group, and both are contributing sponsors to nonexempt plans. Company A has a July 1 fiscal year, and Company B has an October 1 fiscal year. The information year is the calendar year. Company A's financial information with respect to its fiscal year ending June 30, 2009, and Company B's financial information with respect to its fiscal year ending September 30, 2009, must be submitted to the PBGC following the end of the 2009 calendar year information year.

(2) *Example 2.* The facts are the same as in Example 1 except that Company B is not a contributing sponsor of a plan and would be an exempt entity using the calendar year as the information year. Because Company B is an exempt entity based on a calendar year information year, it is excluded when determining the information year. Thus, the information year is the July 1 fiscal year. Note that Company B is an exempt entity even if it would not be exempt based on the July information year.

(3) *Example 3.* The facts are the same as in Example 2 except that Company B would not be an exempt entity using the calendar year information year but would be exempt based on an information year that is the July 1 fiscal year. Since Company B is not exempt based on a calendar year information year, it may not be excluded when determining the information year. Therefore, the information year is the calendar year and Company B is not an exempt entity.

(e) *Special rules for certain plan years.* If a plan maintained by the members of the contributing sponsor's controlled group has two plan years that end in the information year or has no plan year that ends in the information year, the last plan year ending on or immediately before the end of information year is deemed to be the plan year ending within the information year.

[61 FR 34022, July 1, 1996, as amended at 70 FR 11544, Mar. 9, 2005; 74 FR 11031, Mar. 16, 2009]

§ 4010.6 Information to be filed.

(a) *General.* (1) *Current filers.* A filer must submit the information specified in § 4010.7 (identifying information), § 4010.8 (plan actuarial information) and § 4010.9 (financial information) with respect to each member of the filer's controlled group and each plan maintained by any member of the filer's controlled group, and any other information relating to the information specified in §§ 4010.7 through 4010.9, as specified in the instructions on PBGC's Web site, <http://www.pbgc.gov>.

(2) *Previous filers.* If a filer for the immediately preceding information year is not required to file for the current information year, the filer must submit information, in accordance with the instructions on PBGC's Web site, <http://www.pbgc.gov>, demonstrating why a filing is not required for the current information year.

(b) *Additional information.* By written notification, PBGC may require any filer to submit additional actuarial or financial information that is necessary to determine plan assets and liabilities for any period through the end of the filer's information year, or the financial status of a filer for any period